

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ESEQUIEL RODRIGUEZ,
(TDCJ-CID #421876),

Plaintiff,

vs.

ANANDA BABBILI, *et al.*,

Defendants.

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CIVIL ACTION H-05-1543

MEMORANDUM AND OPINION

Esequiel Rodriguez, a Texas Department of Criminal Justice inmate, sued in April 2005, alleging a denial of adequate medical care and improper nutrition. Rodriguez's applications to proceed as a pauper, (Docket Entry Nos. 2 & 3), are DENIED. Rodriguez, proceeding *pro se*, sues Ananda Babbili and Mary Gotcher, physicians at the Beto and Michael Units respectively; Cecilia Okoye, a registered nurse at the Darrington Unit; Ricad Victoria, a physician at the Darrington Unit; Dehl Wilson, a medical administrator; Lannette Linthicum, a physician in Huntsville; Jo Ann Wood, a registered nurse in Huntsville; R. Morris, the Facility Medical Complaints Coordinator at the Darrington Unit; and Rick Perry, the governor of Texas.

The threshold issue is whether Rodriguez's complaint is barred by the three-strikes provision of 28 U.S.C. § 1915(g).

I. Background

In his complaint, Rodriguez states that the events at issue took place at the Michael Unit. He explains that he was diagnosed with Hepatitis C in July 1999 and that prison staff have monitored his condition since then. He was transferred to the Darrington Unit for treatment after he was diagnosed with cirrhosis. He complains that the defendants have denied him timely, adequate care for his serious medical conditions. Rodriguez also complains that prison staff denied his request for a special diet; and did not allow him to purchase vitamins that were sold outside the prison; and did not allow him to see a podiatrist who could prescribe new medical boots. He also complains that the Texas Board of Pardons and Paroles has refused to grant him an emergency medical reprieve.

Rodriguez seeks damages, an injunction, and a declaratory judgment.

II. Analysis

A prisoner may not bring a civil action *in forma pauperis* in federal court if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Before filing this action, Rodriguez had at least three suits dismissed as frivolous. *Rodriguez v. Maland*, 6:97-CV-897 (E.D. Tex.) (dismissed on October 30, 1997); *Rodriguez v. Scott*, Appeal No. 95-20154¹ (5th Cir.) (dismissed on November 14, 1995); and *Rodriguez v. Benitez*, 1:93-CV-675 (W.D.

¹ Appeal from 4:89-4083 (S.D. Tex.).

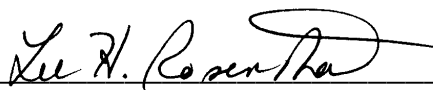
Tex.) (dismissed on August 12, 1994). In the present case, Rodriguez has not alleged, nor does his complaint demonstrate, that he is in imminent danger of serious physical injury. Accordingly, Rodriguez is barred under 28 U.S.C. § 1915(g) from proceeding *in forma pauperis* in this action.

III. Conclusion

Rodriguez's applications to proceed as a pauper, (Docket Entry Nos. 2, 3), are DENIED. The complaint filed by Esequiel Rodriguez, (TDCJ-CID #421876), is DISMISSED under 28 U.S.C. § 1915(g). All pending motions are DENIED. Rodriguez is warned that continued frivolous filings may result in the imposition of sanctions.

The Clerk is directed to provide a copy to the parties; the TDCJ - Office of the General Counsel, P.O. Box 13084, Austin, Texas, 78711, Fax Number (512) 936-2159; and Clerk of Court, United States District Court for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, attention: Betty Parker.

SIGNED on May 10, 2005, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", is written over a horizontal line.

Lee H. Rosenthal
United States District Judge